

HOUSE No. 1899

By Mr. Linsky of Natick, petition of David Paul Linsky and others relative to further regulating the sale of handguns in the Commonwealth. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

PETITION OF:

David Paul Linsky Alice Hanlon Peisch
Ruth B. Balser

In the Year Two Thousand and Five.

AN ACT PROTECTING CHILDREN AND ADULTS FROM UNSAFE HANDGUNS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 93A of the General Laws is hereby amended by adding
2 the following section:—

3 Section 12. (A) Definitions.

4 For purposes of this section, the following terms shall have the
5 following meanings:

6 *Average group diameter test result:* shall mean the arithmetic
7 mean of three separate group diameter test results taken from a set
8 distance.

9 *Combination handle lock:* shall mean a device which precludes
10 the use of the handgun unless the combination tumblers are prop-
11 erly aligned. This device may, for example, have the numbers for
12 the combination tumbler protrude from the handle of the handgun.

13 *Educational collector:* shall mean an individual who is prop-
14 erly licensed as a bona fide collector and whose collection is
15 maintained for purposes of display, research, lecturing, demon-
16 stration, or historical significance, as opposed to being maintained
17 for personal enjoyment and/or possible future profit.

18 *Group diameter test result:* shall mean the largest spread in
19 inches between the centers of any of the holes made in a test
20 target after firing five rounds from the handgun in question at the

21 target from a set distance. The ammunition used shall be the type
22 recommended by the handgun manufacturer in its user manual, or
23 if none is recommended, any standard ammunition of the correct
24 caliber in new condition.

25 *Hammer deactivation device*: shall mean a built-in device (or
26 an extension of the hammer) which allows a user manually to
27 lower the handgun's hammer into a deactivated position, and
28 which must be manually re-toggled in order to re-cock the
29 hammer before the handgun can be fired.

30 *Handgun*: shall mean a weapon, designed to be fired by the use
31 of a single hand, from which maybe be fired or ejected one or
32 more solid projectiles propelled via a chemical ignition, and
33 which has:

- 34 (a) A smooth bore with a barrel less than 18 inches long;
- 35 (b) A smooth bore and an overall weapon length of less than 26
36 inches; or
- 37 (c) A rifled bore with a barrel less than 16 inches.

38 *Handgun Drop Test*: shall mean a test in which the handgun in
39 question shall be:

- 40 (a) Test loaded;
- 41 (b) Set such that the handgun is ready to fire; and
- 42 (c) Dropped onto a solid slab on concrete from a height of one
43 meter from each of the following positions:
 - 44 1. Normal firing position,
 - 45 2. Upside down,
 - 46 3. On grip,
 - 47 4. On the muzzle,
 - 48 5. On either side, and
 - 49 6. On the exposed hammer or striker (or if there is no exposed
50 hammer or striker, then the rearmost part of the firearm).

51 In addition, if the handgun is designed so that its hammer or
52 striker may be set in other positions, the handgun in question shall
53 be tested with the hammer or striker in each such position (but
54 otherwise ready to fire). Alternatively, the tester may use different
55 handguns of the same make and model, in similar condition, for
56 the test of each of these hammer/striker/ settings.

57 *Handgun Performance Test*: shall mean a test in which the
58 handgun in question shall fire 600 rounds, stopping every 100
59 rounds to tighten any loose screws and to clean the gun (if

60 required by the cleaning schedule in the user manual), and as
61 needed to refill the empty magazine or cylinder to capacity before
62 continuing. For any handgun that loads other than via a detachable
63 magazine, the tester shall also pause every 50 rounds for ten min-
64 utes. The ammunition used shall be the type recommended by the
65 handgun manufacturer in its user manual, or if none is recom-
66 mended, any standard ammunition of the correct caliber in new
67 condition. A handgun shall pass this test if it:

68 (a) Fires the first 20 rounds without a malfunction, and

69 (b) Fires the full 600 rounds with no more than six malfunc-
70 tions and without any crack or breakage of an operating part of the
71 handgun which increases the danger of injury to the user.

72 *Handgun-purveyor*: shall mean any person or entity that trans-
73 fers handguns to a customer located within the Commonwealth of
74 Massachusetts. However, handgun-purveyor shall not include any
75 of the aforementioned if:

76 (a) The person or entity transfers less than five handguns per
77 year,

78 (b) The transfer in question is for the purpose of, and does,
79 directly or indirectly, supply law enforcement officials or United
80 States military personnel with handguns for their official duties,

81 (c) The transfer in question is for the purpose of, and does,
82 directly or indirectly, supply museums or educational collectors
83 with the handguns in question,

84 (d) The transfer in question is undertaken to, and does, result in
85 the surrender of handgun to military or law enforcement per-
86 sonnel,

87 (e) The transfer in question is of handguns that qualify as
88 antique firearms as defined in 18 U.S.C. s. 921, or

89 (f) The transfer in question is of handguns that are solely
90 designed and sold specifically for formal target shooting competi-
91 tion.

92 *Key activated trigger lock*: shall mean a device that when
93 locked in place by means of a key, prevents a potential user from
94 pulling the trigger of the handgun without first removing the
95 trigger lock by use of the trigger lock's key.

96 *Load indicator*: shall mean a device which plainly indicates
97 that a cartridge is in the firing chamber within the handgun.

98 *Magazine safety disconnect*: shall mean a device that prevents
99 the firing of the handgun when the magazine is detached from the
100 handgun.

101 *Make and Model*: shall mean any group of handguns, all of
102 which are made by a manufacture, by the same method and
103 according to the same design pattern and specifications.

104 *Make and Model Performance Requirements*: shall mean a test
105 in which three handguns in new condition of the make and model
106 being tested shall each pass the Handgun Performance Test.

107 *Make and Model's Average Group Diameter Test Result*: shall
108 mean the arithmetic mean of the results of three Average Group
109 Diameter Tests, each preformed on a different handgun in new
110 condition of the make and model being tested.

111 *Malfunction*: shall mean any failure to feed, chamber, fire,
112 extract, or eject a round, or any failure to accept or eject a maga-
113 zine, or any other failure which prevents the handgun, without
114 manual intervention beyond that needed for routine firing and
115 periodic reloading, from firing the chambered round or moving a
116 new round into position so that the handgun is capable of firing
117 the new round properly. Malfunction shall not include a misfire
118 caused by a faulty cartridge whose primer fails to detonate when
119 properly hit by the handgun's firing mechanism.

120 *Passive use-limitation device*: shall mean a device that auto-
121 matically resets itself so that an unauthorized user cannot fire the
122 handgun. As an example, a key activated trigger lock is not a pas-
123 sive use-limitation device because it needs to be re-locked manu-
124 ally after its key is used to unlock it; thus the next user can fire the
125 handgun without having to unlock the handgun.

126 *Prone to accidental discharge*: shall mean unable to pass the
127 following test: five handguns in new condition of the make and
128 model in question shall each be subjected to, and none shall dis-
129 charge during, the Handgun Drop Test.

130 *Ready to fire*: shall mean loaded, and in a condition such that
131 pulling the trigger (and taking any action that must simultaneously
132 accompany the pulling of the trigger as part of the firing proce-
133 dure) will fire the handgun.

134 *Serial number*: shall mean the number stamped, inscribed, or
135 placed upon a handgun by a handgun-purveyor pursuant to M.G.L.
136 c. 269, s. 11E.

137 *Solenoid use-limitation device*: shall mean a device which pre-
138 cludes, by use of a magnetically activated relay, the firing of the
139 handgun unless a magnet of the appropriate strength is placed in
140 proximity to the handle of the handgun. Such magnet may be
141 imbedded in a ring which can be worn on the user's gun hand.

142 *Test loaded*: shall mean loading each chamber of the handgun
143 in question with an empty case with a primer installed.

144 *Transfer*: shall mean sell, rent, or lease. Transfer shall not
145 include a sale to a business entity that is primarily a firearm
146 wholesaler, so long as the sale, by its terms, prohibits the pur-
147 chaser from reselling the handgun to a handgun retailer or con-
148 sumer in the Commonwealth.

149 (B) Unfair or Deceptive Practices: General.

150 (1) It shall be an unfair or deceptive practice for any handgun-
151 purveyor, in conjunction with the transfer (or offer to transfer) of
152 a handgun to a consumer in the Commonwealth, to fail to comply
153 with M.G.L. c. 93A or any other existing local, state, or federal
154 statute, rule or regulation whose implementation serves to protect
155 consumers from unfair and deceptive practices by means
156 including, but not limited to, regulating conditions of sale, pre-
157 cluding sale of products when such sale will place purchasers in
158 violation of the law, demanding the disclosure of information, and
159 ensuring the satisfactory condition and non-contraband status of
160 goods proffered for sale. Examples of the above included laws,
161 regulations, and rules that:

162 (a) Forbid the sale of handguns to juveniles, addicts, or men-
163 tally incompetent individuals,

164 (b) Forbid the sale of silencers, armor penetrating bullets, or
165 machine-gun pistols (when possession by purchasers will be
166 unlawful),

167 (c) Forbid participation in any way in the obliteration of serial
168 numbers from handguns prior to sale,

169 (d) Forbid the sale of handguns whose serial numbers have
170 been defaced,

171 (e) Require sellers to keep records of handgun sales,

172 (f) Forbid sellers from delivering or transporting handguns,
173 loaded, or

174 (g) Forbid the delivery of handguns to the custody of a minor.

175 (2) It shall be an unfair or deceptive practice for a handgun-pur-
176 veyor to make material misrepresentations or make false certifica-
177 tions regarding any handgun offered for transfer.

178 (C) Tamper-Resistant Serial Numbers.

179 It shall be an unfair or deceptive practice for a handgun-pur-
180 veyor to transfer or offer to transfer to any customer located
181 within the Commonwealth any handgun on which the serial
182 number has been placed solely in a location on the handgun that
183 results in the number's susceptibility to eradication. A serial
184 number shall be deemed not susceptible to eradication for pur-
185 poses of this section if:

186 (1) It is placed on the interior of the handgun, and the handgun-
187 purveyor provides information regarding the location of the inte-
188 rior serial number to the Office of the Attorney General and other
189 law enforcement officials upon request; or

190 (2) It is placed on the exterior of the handgun in a way that is
191 not visible to the unaided eye, but is visible with the aid of an
192 infrared detector or other device and the handgun-purveyor pro-
193 vides information regarding the location of the no visible serial
194 number of any method by which this number can be made view-
195 able to the Office of the Attorney General and other law enforce-
196 ment officials upon request.

197 (D) *Sale of Handgun Made From Inferior Materials.*

198 It shall be an unfair or deceptive practice for a handgun-pur-
199 veyor to transfer or offer to transfer to any customer located
200 within the Commonwealth any make and model of handgun that:

201 (1) Has a frame, barrel, cylinder, side or breechblock:

202 (a) Composed of any metal having a melting point less than 900
203 degrees F,

204 (b) Composed of any material having an ultimate tensile
205 strength of less than 55,000 pounds per square inch, or

206 (c) Composed of any powdered metal having a density of less
207 than 7.5 grams per cubic centimeter; or

208 (2) Is prone to repeated firing based in a single pull of the
209 trigger, prone to the explosion of the handgun during firing with
210 standard ammunition, or prone to accidental discharge.

211 (3) Subsection (D) shall not apply to any make and model of
212 handgun which satisfies the Make and Model Performance
213 Requirements. The Attorney General may require that the

214 handgun-purveyor, or the entity testing the make and model in
215 question on behalf of the handgun-purveyor, provide a sworn cer-
216 tification verifying that the make and model met the performance
217 requirements. At the Attorney General's discretion, he may, upon
218 60 days notice, require that any such test be performed again by
219 an independent testing entity chosen by the Attorney General,
220 upon three test guns of the make and model purchased at retail. In
221 such a case, the prior certification shall be prospectively invalid at
222 the conclusion of the notice period and the make and model in
223 question may henceforth only meet the Make and Model Perfor-
224 mance Requirements by obtaining a certification from the inde-
225 pendent tester. A handgun-purveyor may resubmit a make and
226 model to the independent tester for testing an unlimited number of
227 times.

228 *(E) Sale of Handguns Without Childproofing or Safety Devices.*

229 (1) It shall be an unfair or deceptive practice to sell a handgun
230 without a safety device in violation of M.G.L. c. 140, s. 131K.

231 (2) It shall be an unfair or deceptive practice for a handgun-pur-
232 veyor to transfer or offer to transfer to any customer located
233 within the Commonwealth any handgun which does not contain a
234 mechanism which effectively precludes an average five year old
235 child from operating the handgun when it is ready to fire; such
236 mechanisms shall include, but are not limited to: raising trigger
237 resistance to at least a ten pound pull, altering the firing mecha-
238 nism so that an average five year old child's hands are too small to
239 operate the handgun, or requiring a series of multiple motions in
240 order to fire that handgun.

241 (3) It shall be an unfair or deceptive practice for a handgun-
242 purveyor to transfer or offer to transfer to any customer located
243 within the Commonwealth any handgun which does not contain a
244 load indicator or a magazine safety disconnect.

245 (4) Subsection (E)(2) shall not apply to handguns which have a
246 hammer deactivation device. Subsection (E)(3) applies only to
247 handguns that have a mechanism to load cartridges via a maga-
248 zine.

249 *(F) Safety Warning /Disclosures.*

250 (1) It shall be an unfair or deceptive practice for a handgun-pur-
251 veyor to transfer or offer to transfer to any customer located
252 within the Commonwealth any handgun unless that handgun is

253 accompanied by the following warning, provided on a separate
254 sheet of paper included within the packaging enclosing the gun,
255 which, in at least 12 point type, states the following:

256 “WARNING FROM THE MASSACHUSETTS ATTORNEY
257 GENERAL: This handgun is not equipped with a device that fully
258 blocks use by unauthorized users. More than 200,000 firearms like
259 this one are stolen from their owners every year in the United
260 States. In addition, there are more than a thousand suicides each
261 year by younger children and teenagers who get access to
262 firearms. Hundreds more die from accidental discharge. It is likely
263 that many more children sustain serious wounds, or inflict such
264 wounds accidentally on others. In order to limit the chance of such
265 misuse, it is imperative that you keep this weapon locked in a
266 secure place and take other steps necessary to limit the possibility
267 of theft or accident. Failure to take reasonable preventive steps
268 may result in innocent lives being lost, and in some circumstances
269 may result in your liability for these deaths.”

270 Failure to include this warning in the packaging enclosing the
271 gun shall not be a violation of this section if the handgun in ques-
272 tion complies with subsection (E)(1) by means of a built in pas-
273 sive use-limitation device including but not limited to a
274 nondetachable solenoid use-limitation device.

275 (2) It shall be an unfair or deceptive practice for a handgun-pur-
276 veyor to transfer directly to a retail customer located within the
277 Commonwealth without demonstrating how to load, unload, and
278 safely store the handgun, and how to engage and disengage all
279 safety devices on the handgun. This shall include an explanation
280 of the circumstance for which the safety devices are designed to
281 prevent the firing of the handgun. The handgun purveyor shall
282 also note for the retail customer the absence, if any, of the
283 following:— a bad load indicator, a magazine safety disconnect or
284 an internal safety.

285 (3) It shall be and unfair or deceptive practice for a handgun-
286 purveyor to transfer to a customer located within the Common-
287 wealth a handgun that has a barrel shorter than three inches,
288 unless the handgun-purveyor discloses the limits of the accuracy
289 of the make and model of the handgun for sale by providing in
290 writing to the customer (prior to sale) the make and model’s
291 average group diameter test result at seven yards, average group

292 diameter test result at 14 yards and, average group diameter rest
293 result at 21 yards.

294 (G) *Transfer of Used Handguns.*

295 (1) Subsection (C) and subsection (E)(2) and (3) shall not apply
296 to the transfer of (or offer to transfer) any handgun that previously
297 had been sold at retail to a consumer and that was manufactured
298 prior to the enforcement date for those provisions.

299 (2) Subsection (F)(3) shall not apply to the transfer of (or offer
300 to transfer) any handgun that previously has been sold at retail to
301 a consumer, was manufactured prior to the effective date for sub-
302 section (F)(3), and for which the handgun-purveyor discloses the
303 limits of the accuracy of the specific handgun for sale by pro-
304 viding in writing to the customer (prior to sale) the handgun's
305 average group diameter test result at seven yards, average group
306 diameter test result at 14 yards, and average group diameter test
307 result at 21 yards.

308 (3) Subsection (D)(2), as it pertains to any make and model
309 prone to accidental discharge, shall not apply to the transfer of (or
310 offer to transfer) any handgun that previously has been sold at
311 retail to a consumer, was manufactured prior to the effective date
312 for subsection (D)(2), and for which the handgun-purveyor has
313 preformed the Handgun Drop Test on the handgun in question in
314 fully cocked position, and on the same handgun (or on other hand-
315 guns of the same make and model in similar condition) in all other
316 hammer/striker positions, and that there were no discharges during
317 the test.

318 (4) Subsection (D)(1) shall not apply to the transfer of (or offer
319 to transfer) any handgun that previously has been sold at retail to
320 a consumer, was manufactured prior to the effective date for sub-
321 section (D)(1), and for which the handgun-purveyor provides a
322 sworn certification to the buyer that the specific handgun pur-
323 chased passed the Handgun Performance Test.

324 (H) *Severability.*

325 If any section or subsection of this Act shall be held invalid, the
326 validity of the remainder of the Act shall not be affected thereby.
327 If the application of any section or subsection of this Act to any
328 person or circumstance shall be held invalid, the applicability of
329 such section or subsection to any other person or circumstance
330 shall not be affected thereby.

331 (I) *Effective Dates.*

332 This Act shall take effect as follows:

333 (1) Subsections (A), (B), (H), (F) (1), and (I) shall apply to acts
334 committed or practices in force as of January 1, 2004.

335 (2) Subsections (D) and (C)(2), (3), and (4) shall apply to acts
336 committed or practices in force as of June 30, 2004

337 (3) Subsections (C), (E), and (G)(1) shall apply to acts com-
338 mitted or practices in force as of September 30, 2004.